IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

MFA.No. 208 OF 2000
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M.V.O.P. 235/1995 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR.

APPELLANT/PETITIONER
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SAJI, S/O. DAVI, CHERUVATHOOR HOUSE,
KALLUPURAM, P.O. KADAVALLUR,
THRISSUR DISTRICT.

BY ADV. SRI.M.C.CHERIAN

RESPONDENT/ 3RD RESPONDENT:
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THE UNITED INDIA INSURANCNE CO. LTD.,
P.B. NO. 12, FAIZAL BUILDING,
OTTAPPALAM, PALAKKAD DISTRICT.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

M.F.A. NO. 208 OF 2000

DATED THIS, THE 12TH DAY OF APRIL, 2007.

J U D G M E N T

Antony Dominic, J.

The claimant in O.P. (MV) No. 235/1995 on the file of the Motor Accident Claims Tribunal, Thrissur, is the appellant herein. The accident occurred on 2.8.1994. On that day, the appellant was riding his motor cycle bearing Reg. No. KRR 5104 and when it reached near the convent at Puttikkara, a bus bearing Reg. No. KL-9/1683 driven by the second respondent came from the opposite side in a rash and negligent manner and dashed against his vehicle. In the accident, the appellant suffered serious injuries which have been noted by the Tribunal in para 11 of its award under Issue No.2. It is seen from Ext.A7 certificate that at the time of accident the appellant was working at the Thrissur Dairy of Milma as Refrigeration Technician and he was getting a monthly income of Rs. 2,490/-. Although the appellant had claimed Rs. 3 lakhs as compensation, the Tribunal, by the impugned award, granted a total compensation of Rs. 83,470/- with interest. Unsatisfied with the award of the Tribunal, the appellant has come up with this appeal.

2. Although the counsel for the appellant was complaining that the compensation awarded under various heads are totally inadequate, except in respect of the compensation for loss of earning and the disability suffered, we are satisfied that on all other items of claims, reasonable compensation has been granted by the Tribunal, on the evidence that was available in the case. We noticed that although the appellant was on leave for the period from 2.8.1994 to 20.4.1995, the Tribunal has granted a sum of Rs. 7,470/- alone towards loss of earning. Since the fact remains that the appellant was on leave during the aforesaid period, we see no justification for the Tribunal to have restricted the compensation towards loss of earning by awarding only three months wages. According to us, the Tribunal, instead of granting three months salary towards this item, ought to have granted wages at least for a period of six months. Therefore, in modification of the award already passed, we award an additional sum of Rs. 7470/- towards loss of earning to the appellant.

3. It is also seen from Ext.A6 certificate that the appellant had suffered a permanent disability of 15%. Ext.A10 order also disclose that on account of the disability suffered by the appellant, on an undertaking given by him that he will not claim any promotional avenues, he was re-designated as a Junior Assistant, which was necessitated only on account of the disability suffered by the appellant. According to the counsel for the appellant, in the process of such a re-designation, he had to forgo all the

promotional avenues attached to the post of Refrigeration Technician which post he was holding on the date of the accident. It was without taking into account this fact that for the only reason that there was no loss of income for the appellant, the Tribunal instead of awarding compensation, chose the method of awarding a global sum. It is on that basis that the Tribunal awarded Rs. 50,000/-. In our view the Tribunal ought to have taken into account the consequence of disability in terms of Ext.A6. Considering the above aspects, we enhance the compensation awarded by the Tribunal in this respect by awarding an additional compensation of Rs. 7,500/-.

Accordingly, in modification of the award that is already passed by the Tribunal, we award an additional compensation of Rs. 15,000/- to the appellant which will carry interest at 7% per annum from the date of petition till realization.

The M.F.A. will stand disposed of as above.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-

P.R. RAMAN &
ANTONY DOMINIC, JJ.

M.F.A. 208 OF 2000

J U D G M E N T

12TH APRIL, 2007.